

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-41713-NCD
Chapter 13

Jason Lee Heir and Carrie Ann Heir,

Debtor(s).

OBJECTION TO CONFIRMATION

TO: Debtor(s) and Attorney for Debtor(s); Jasmine Keller, Chapter 13 Trustee; U.S. Trustee; and other parties in interest.

1. Wells Fargo Financial Acceptance, a secured creditor of Debtor(s), by its undersigned attorney, makes this objection to the confirmation of the proposed plan of the Debtor(s).

2. This objection is filed pursuant to Fed. R. Bankr. P. 3020(b) and Wells Fargo Financial Acceptance requests this Court to enter an order denying confirmation of Debtor's proposed Chapter 13 plan (the "Plan"). This Court has jurisdiction over this motion pursuant to 28 U.S.C. Sec. 1334(a) and 157(a), 11 U.S.C. §1325 and applicable rules. This is a core proceeding.

3. Hearing on confirmation of the Plan is scheduled for **10:30 am on Thursday, September 2, 2004**, before the Honorable Nancy C. Dreher, in Courtroom No. 7 West, 300 South Fourth Street, Minneapolis, Minnesota 55415, or as soon thereafter as counsel can be heard.

4. The petition commencing this Chapter 13 case was filed on July 2, 2004 and the case is now pending in this Court.

5. Wells Fargo Financial Acceptance holds a valid, perfected interest in a 2001 Oldsmobile Bravada, vehicle identification number 1GHDT13WX12149207 (the "Vehicle"). The value of the Vehicle is \$14,950.00.

6. Copies of Wells Fargo Financial Acceptance's agreement with Debtor(s) (the "Contract") and evidence of perfection of Wells Fargo Financial Acceptance's interest in the Vehicle are attached hereto as Exhibits A and B and incorporated herein by reference.

7. The Debtor(s) purchased the Vehicle less than 8 months before they filed for bankruptcy.

8. The balance due to Wells Fargo Financial Acceptance as of the petition date totals \$18,649.60 together with interest accruing at the contract rate of 12.9%. The fair market value of the Vehicle is at least \$14,950.00. Accordingly, the claim of Wells Fargo Financial Acceptance should be treated as secured to the extent of at least \$14,950.00.

9. The Plan, however, provides for (i) Wells Fargo Financial Acceptance's secured claim of \$9,500 with interest accruing at 6%; (ii) total payment on Wells Fargo Financial Acceptance's secured claim of \$10,693; and (iii) monthly payments of \$260 commencing in month 4 for 39 months.

10. The Plan fails to provide for payment of the secured claim, an appropriate interest rate and payments necessary to pay the secured claim plus interest in full. An amortization of the proposed payments at a meager 10% interest rate is attached hereto.

11. According to the schedules, Mr. Heir has only been employed for 1 ½ years at his present job and Mrs. Heir has only been employed for 4 months at her current job. Their monthly income is also dependent upon a part-time second job.

12. The household is made up of 2 adults and 4 children. The expense structure provides only \$540.00 for food, only \$100 for clothing, only \$25 for home maintenance, no money for homeowner's insurance, no money for school expenses, no money for allowances and only \$320 month for daycare. There are no escalations for any expenses over the 5 years of the plan.

13. The plan will take at least 60 months to complete – after increasing the secured claim of Wells Fargo Financial Acceptance.

14. No payments are provided during the first 3 months of the Plan – even though the Vehicle continues to depreciate. Using a depreciation rate of 20% per year, the monthly payments do not cover the depreciation and interest during the term of the plan until month 51.

15. The risk factor should be at least 6% plus prime of 4.25% in this case based upon the facts stated above and the relatively new contract.

16. The recent purchase of the Vehicle and lack of meaningful payments prepetition indicates a lack of good faith.

17. The Plan does not comply with the provisions of Chapter 13.

18. The Plan does not provide Wells Fargo Financial Acceptance with adequate protection of its interest in the vehicle.

19. Movant gives notice that it may, if necessary, call A. Howard or another representative of Wells Fargo Financial Acceptance to testify at the hearing.

20. THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION WILL BE USED FOR THAT PURPOSE.

WHEREFORE, Wells Fargo Financial Acceptance respectfully requests this Court to enter an order denying confirmation of the Debtor' proposed plan and such other further relief as is just and equitable.

Dated: August 10, 2004

STEWART, ZLIMEN & JUNGERS

By /e/ Bradley J. Halberstadt
Bradley J. Halberstadt (#215296)
Attorneys for Movant
430 Oak Grove Street, Ste. 200
Minneapolis, Minnesota 55403
(612) 870-4100

MN Bky. No. 04-43713		8.00%				
<u>Number</u>	<u>Payment Amount</u>	<u>Interest Payment</u>	<u>Principal Payment</u>	<u>Balance</u>	<u>(20% Depr.) Value</u>	<u>Potential Loss</u>
				14,950.00	14,950.00	0
1	0.00	99.67	(99.67)	15,049.67	14,700.83	348.83
2	0.00	100.33	(100.33)	15,150.00	14,455.82	694.18
3	0.00	101.00	(101.00)	15,251.00	14,214.89	1,036.11
4	260.00	101.67	158.33	15,092.67	13,977.97	1,114.70
5	260.00	100.62	159.38	14,933.29	13,745.01	1,188.28
6	260.00	99.56	160.44	14,772.84	13,515.92	1,256.92
7	260.00	98.49	161.51	14,611.33	13,290.66	1,320.67
8	260.00	97.41	162.59	14,448.74	13,069.15	1,379.59
9	260.00	96.32	163.68	14,285.06	12,851.33	1,433.73
10	260.00	95.23	164.77	14,120.30	12,637.14	1,483.16
11	260.00	94.14	165.86	13,954.43	12,426.52	1,527.91
12	260.00	93.03	166.97	13,787.46	12,219.41	1,568.05
13	260.00	91.92	168.08	13,619.38	12,015.76	1,603.62
14	260.00	90.80	169.20	13,450.17	11,815.49	1,634.68
15	260.00	89.67	170.33	13,279.84	11,618.57	1,661.27
16	260.00	88.53	171.47	13,108.37	11,424.93	1,683.45
17	260.00	87.39	172.61	12,935.76	11,234.51	1,701.25
18	260.00	86.24	173.76	12,762.00	11,047.27	1,714.73
19	260.00	85.08	174.92	12,587.08	10,863.15	1,723.94
20	260.00	83.91	176.09	12,411.00	10,682.09	1,728.90
21	260.00	82.74	177.26	12,233.74	10,504.06	1,729.68
22	260.00	81.56	178.44	12,055.29	10,328.99	1,726.30
23	260.00	80.37	179.63	11,875.66	10,156.84	1,718.82
24	260.00	79.17	180.83	11,694.83	9,987.56	1,707.27
25	260.00	77.97	182.03	11,512.80	9,821.10	1,691.70
26	260.00	76.75	183.25	11,329.55	9,657.42	1,672.13
27	260.00	75.53	184.47	11,145.08	9,496.46	1,648.62
28	260.00	74.30	185.70	10,959.38	9,338.19	1,621.20
29	260.00	73.06	186.94	10,772.44	9,182.55	1,589.90
30	260.00	71.82	188.18	10,584.26	9,029.51	1,554.75
31	260.00	70.56	189.44	10,394.82	8,879.02	1,515.81
32	260.00	69.30	190.70	10,204.12	8,731.03	1,473.09
33	260.00	68.03	191.97	10,012.15	8,585.51	1,426.64
34	260.00	66.75	193.25	9,818.90	8,442.42	1,376.47
35	260.00	65.46	194.54	9,624.36	8,301.72	1,322.64
36	260.00	64.16	195.84	9,428.52	8,163.35	1,265.17
37	260.00	62.86	197.14	9,231.38	8,027.30	1,204.08
38	260.00	61.54	198.46	9,032.92	7,893.51	1,139.41
39	260.00	60.22	199.78	8,833.14	7,761.95	1,071.19
40	260.00	58.89	201.11	8,632.03	7,632.58	999.44
41	260.00	57.55	202.45	8,429.57	7,505.38	924.20
42	260.00	56.20	203.80	8,225.77	7,380.29	845.48
43	260.00	54.84	205.16	8,020.61	7,257.28	763.33
44	260.00	53.47	206.53	7,814.08	7,136.33	677.75
45	260.00	52.09	207.91	7,606.17	7,017.39	588.78
46	260.00	50.71	209.29	7,396.88	6,900.43	496.45
47	260.00	49.31	210.69	7,186.19	6,785.42	400.77
48	260.00	47.91	212.09	6,974.10	6,672.33	301.77
49	260.00	46.49	213.51	6,760.59	6,561.13	199.47
50	260.00	45.07	214.93	6,545.66	6,451.78	93.89
51	260.00	43.64	216.36	6,329.30	6,344.25	(14.94)
52	260.00	42.20	217.80	6,111.50	6,238.51	(127.01)
53	260.00	40.74	219.26	5,892.24	6,134.53	(242.29)
54	260.00	39.28	220.72	5,671.52	6,032.29	(360.77)
55	260.00	37.81	222.19	5,449.33	5,931.75	(482.42)
56	260.00	36.33	223.67	5,225.66	5,832.89	(607.23)
57	260.00	34.84	225.16	5,000.50	5,735.68	(735.18)
58	260.00	33.34	226.66	4,773.84	5,640.08	(866.24)
59	260.00	31.83	228.17	4,545.66	5,546.08	(1,000.42)
60	260.00	30.30	229.70	4,315.97	5,453.65	(1,137.68)
TOTALS	\$14,820.00	\$4,185.97	\$10,634.03			

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 13 Case

Jason L. and Carrie A. Heir,

Bky. No. 04-43713

Debtor(s).

Affidavit of Andrew J. Howard

I, Andrew J. Howard, of Wells Fargo Financial Acceptance, declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:

1. Wells Fargo Financial Acceptance has a security interest in the following (the "Collateral"):

2001 Oldsmobile Bravada AWD VIN# 1GHDT13WX12149207.

2. \$18,649.60 is the outstanding balance under the contract as of August 4, 2004.

3. \$1,537.14 is the amount of the existing delinquency under the contract.

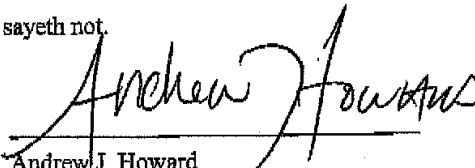
4. \$14,950.00 is the fair market value of the Collateral.

5. Yes Appropriate insurance has been verified.

6. N/A is the payment default under the Chapter 13 Plan.

Further your affiant sayeth not.

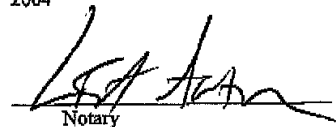
Dated: 8/4/2004



Andrew J. Howard

Bankruptcy Specialist
Wells Fargo Financial Acceptance

Subscribed and sworn to before me on August 4,
2004



Notary



667632-4511680

RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT		Seller GOULD BROS CHEVROLET COMPANY PO BOX 368 MONTICELLO, MN 55367 We and our mean the Seller above, its successors and assigns.	Buyer CARRIE HEIN 1500 SUNNY MAY CT MONTICELLO, MN 55367 You and our mean the Buyer above, and guarantor, jointly and individually.
No.			
Date	NOVEMBER 15th, 2003		

SALE: You agree to purchase from us, over time, the Motor Vehicle (Vehicle) and services described below. Your purchase is subject to the terms and conditions of this contract and security agreement (Contract). The Vehicle is sold in its present condition, together with the usual accessories and attachments.

Description of Motor Vehicle Purchased	Year	2001	VIN	1G8DT1AMX12149207	Other:
Make	Model	OLDSMOBILE BRAVADA	Lic. No./Year		
			<input type="checkbox"/> New <input checked="" type="checkbox"/> Used		

Description of Trade-In

SECURITY: To secure your payment and performance under the terms of this Contract, you give us a security interest in the Vehicle, all accessories, attachments, accessories, and equipment placed in or on the Vehicle, together called Property, and proceeds of the Property. You also assign to us and give us a security interest in proceeds and premium refunds of any insurance and service contracts purchased with this Contract.

PROMISE TO PAY AND PAYMENT TERMS: You promise to pay us the principal amount of \$ 18627.10, plus finance charges according to the unpaid balance at the rate of 12.90 % per year from today's date until paid in full. Finance charges accrue on a 365 day basis. You agree to pay this Contract according to the payment schedule and late charge provisions shown in the TRUTH IN LENDING DISCLOSURES. You also agree to pay any additional amounts according to the terms and conditions of this Contract.

☐ **LOAN ADMINISTRATION FEE:** You agree to pay an additional, nonrefundable loan administration fee of \$25.00 that will be paid in cash. ☐ paid pro rata over the contract term. ☐ withheld from the proceeds (if the fee is withheld from the proceeds, the amount is included in the principal sum).

DOWN PAYMENT: You also agree to pay, or apply to the Cash Price, on or before today's date, any cash, rebate and net trade-in value described in the ITEMIZATION OF AMOUNT FINANCED. ☐ You agree to make deferred payments as part of the cash down payment as reflected in your Payment Schedule.

TRUTH IN LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	AMOUNT FINANCED The amount of credit provided to you or on your behalf.	TOTAL OF PAYMENTS The amount you will have paid when you have made all scheduled payments.	TOTAL SALE PRICE The total cost of your purchase on credit, excluding your down payment of \$
12.90 %	\$ 8368.58	\$ 18627.10	\$ 26995.68	\$ 26995.68
Payment Schedule: Your payment schedule will be				
Number of Payments	Amount of Payments	When Payments Are Due		
72	\$ 374.34	MONTHLY BEGINNING: 12/30/2003		

Security: You are giving a security interest in the Motor Vehicle purchased.

☐ **Late Charge:** If a payment is more than 10 days late, you will be charged \$10. ☐ This amount may increase so as to always be the highest amount allowed by law under Minn. Stat. § 47.55.

Prepayment: If you pay off this Contract early, you will not have to pay a penalty.

☐ **Refund:** If you pay off this Contract early, you will not be entitled to a refund of part of the loan administration fee.

Contract Provisions: You can see the terms of this Contract for any additional information about nonpayment, default, any required repayment before the scheduled date, and prepayment refunds and penalties.

CREDIT INSURANCE: Credit life, credit disability (accident and health), and any other insurance coverage quoted below, are not required to obtain credit and we will not provide them unless you sign and agree to pay the additional premium. If you want such insurance, we will obtain it for you (if you qualify for coverage). We are quoting below ONLY the coverages you have chosen to purchase.

Credit Life: Insured ☐ Single ☐ Joint Prem. \$ N/A Term N/A

Credit Disability: Insured ☐ Single ☐ Joint Prem. \$ N/A Term N/A

Your signature below means you want (only) the insurance coverage(s) quoted above. If none are quoted, you have declined any coverages we offered.

Buyer: CARRIE HEIN Buyer: CARRIE HEIN

PROPERTY INSURANCE: You must insure the Property securing this Contract. You may purchase or provide the insurance through any insurance company reasonably acceptable to us. The collision coverage deductible may not exceed \$ N/A. You get insurance from or through us you will pay \$ N/A for N/A of coverage.

This premium is calculated as follows:
☐ N/A Deductible, Collision Coverage \$ N/A
☐ N/A Deductible, Comprehensive Cov. \$ N/A
☐ Fire-Theft and Combined Additional Coverage \$ N/A

Liability Insurance: coverage for bodily injury and motor vehicle damage caused to others is not included in this Contract unless checked and indicated.

☒ **MOTOR VEHICLE SERVICE CONTRACT:** With your purchase of the Vehicle, you agree to purchase a Motor Vehicle Service Contract to cover

This Service Contract will be in effect for

ASSIGNMENT: This Contract and Security Agreement is assigned to WELLS FARGO. This assignment is made ☐ under the terms of a separate agreement. ☒ under the terms of the ASSIGNMENT BY SELLER on page 2. This assignment is made with recourse.
 Seller By: [Signature] Date: 11/15/2003

BUYER: CARRIE HEIN 11/15/2003
 Signature: CARRIE HEIN Date: 11/15/2003

SELLER: [Signature] Date: 11/15/2003

MINNESOTA RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT
 Form 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1263, 1264, 1265, 1266, 1267, 1268, 1269, 1270, 1271, 1272, 1273, 1274, 1275, 1276, 1277, 1278, 1279, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1292, 1293, 1294, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1342, 1343, 1344, 1345, 1346, 1347, 1348, 1349, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1357, 1358, 1359, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1367, 1368, 1369, 1370, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1380, 1381, 1382, 1383, 1384, 1385, 1386, 1387, 1388, 1389, 1390, 1391, 1392, 1393, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1440, 1441, 1442, 1443, 1444, 1445, 1446, 1447, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1458, 1459, 1460, 1461, 1462, 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471, 1472, 1473, 1474, 1475, 1476, 1477, 1478, 1479, 1480, 1481, 1482, 1483, 1484, 1485, 1486, 1487, 1488, 1489, 1490, 1491, 1492, 1493, 1494, 1495, 1496, 1497, 1498, 1499, 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1510, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1519, 1520, 1521, 1522, 1523, 1524, 1525, 1526, 1527, 1528, 1529, 1530, 1531, 1532, 1533, 1534, 1535, 1536, 1537, 1538, 1539, 1540, 1541, 1542, 1543, 1544, 1545, 1546, 1547, 1548, 1549, 1550, 1551, 1552, 1553, 1554, 1555, 1556, 1557, 1558, 1559, 1560, 1561, 1562, 1563, 1564, 1565, 1566, 1567, 1568, 1569, 1570, 1571, 1572, 1573, 1574, 1575, 1576, 1577, 1578, 1579, 1580, 1581, 1582, 1583, 1584, 1585, 1586, 1587, 1588, 1589, 1590, 1591, 1592, 1593, 1594, 1595, 1596, 1597, 1598, 1599, 1600, 1601, 1602, 1603, 1604, 1605, 1606, 1607, 1608, 1609, 1610, 1611, 1612, 1613, 1614, 1615, 1616, 1617, 1618, 1619, 1620, 1621, 1622, 1623, 1624, 1625, 1626, 1627, 1628, 1629, 1630, 1631, 1632, 1633, 1634, 1635, 1636, 1637, 1638, 1639, 1640, 1641, 1642, 1643, 1644, 1645, 1646, 1647, 1648, 1649, 1650, 1651, 1652, 1653, 1654, 1655, 1656, 1657, 1658, 1659, 1660, 1661, 1662, 1663, 1664, 1665, 1666, 1667, 1668, 1669, 1670, 1671, 1672, 1673, 1674, 1675, 1676, 1677, 1678, 1679, 1680, 1681, 1682, 1683, 1684, 1685, 1686, 1687, 1688, 1689, 1690, 1691, 1692, 1693, 1694, 1695, 1696, 1697, 1698, 1699, 1700, 1701, 1702, 1703, 1704, 1705, 1706, 1707, 1708, 1709, 1710, 1711, 1712, 1713, 1714, 1715, 1716, 1717, 1718, 1719, 1720, 1721, 1722, 1723, 1724, 1725, 1726, 1727, 1728, 1729, 1730, 1731, 1732, 1733, 1734, 1735, 1736, 1737, 1738, 1739, 1740, 1741, 1742, 1743, 1744, 1745, 1746, 1747, 1748, 1749, 1750, 1751, 1752, 1753, 1754, 1755, 1756, 1757, 1758, 1759, 1760, 1761, 1762, 1763, 1764, 1765, 1766, 1767, 1768, 1769, 1770, 1771, 1772, 1773, 1774, 1775, 1776, 1777, 1778, 1779, 1780, 1781, 1782, 1783, 1784, 1785, 1786, 1787, 1788, 1789, 1790, 1791, 1792, 1793, 1794, 1795, 1796, 1797, 1798, 1799, 1800, 1801, 1802, 1803, 1804, 1805, 1806, 1807, 1808, 1809, 1810, 1811, 1812, 1813, 1814, 1815, 1816, 1817, 1818, 1819, 1820, 1821, 1822, 1823, 1824, 1825, 1826, 1827, 1828, 1829, 1830, 1831, 1832, 1833, 1834, 1835, 1836, 1837, 1838, 1839, 1840, 1841, 1842, 1843, 1844, 1845, 1846, 1847, 1848, 1849, 1850, 1851, 1852, 1853, 1854, 1855, 1856, 1857, 1858, 1859, 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, 1879, 1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, 1895, 1896, 1897, 1898, 1899, 1900, 1901, 1902, 1903, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532,

JUL-20-2004 TUE 07:25 PM

FAX NO. 8005782045

P.03
Andy

WELLS FARGO BK NA
PO BX 53439
PHOENIX AZ 85072-3439

02
|||||

REMAIN THIS DOCUMENT - See reverse
Side of this form for removing this lien.

Year	01	Make	OLDS	Model	4MBRA	VIN	1GHD13M1214920711141542
Plate No.							63630R656
Security Date							1/1/01
Plate No.							1/1/01

1ST SECURED PARTY

LIEN HOLDER

MINNESOTA DEPARTMENT OF PUBLIC SAFETY
DRIVER & VEHICLE SERVICES DIVISION
445 MINNESOTA ST. ST. PAUL, MN 55101
CONFIRMATION OF LIEN REGISTRATION - DEBTOR NAME AND ADDRESS
HEIR CARRIE ANN
1500 SIMPLY WAY CT
ANDRA MN 55303

LWC135

First Class
USPS
PAID
Permit No. 171
St. Paul, MN

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No.04-41713-NCD

Chapter 13

Jason Lee Heir and Carrie Ann Heir,

Debtor(s).

***MEMORANDUM IN SUPPORT OF
OBJECTION TO CONFIRMATION***

Wells Fargo Financial Acceptance submits this memorandum of law in support of its objection to confirmation in the above-entitled matter.

FACTS

Wells Fargo Financial Acceptance holds a valid, perfected interest in a 2001 Oldsmobile Bravada, vehicle identification number 1GHDT13WX12149207 (the "Vehicle").

The Debtor(s) purchased the Vehicle less than 8 months before they filed for bankruptcy. The balance due to Wells Fargo Financial Acceptance as of the petition date totals \$18,649.60 together with interest accruing at the contract rate of 12.9%. The fair market value of the Vehicle is at least \$14,950.00. Accordingly, the claim of Wells Fargo Financial Acceptance should be treated as secured to the extent of at least \$14,950.00.

The Plan, however, provides for (i) Wells Fargo Financial Acceptance's secured claim of \$9,500 with interest accruing at 6%; (ii) total payment on Wells Fargo Financial Acceptance's secured claim of \$10,693; and (iii) monthly payments of \$260 commencing in month 4 for 39 months.

The Plan fails to provide for payment of the secured claim, an appropriate interest rate and payments necessary to pay the secured claim plus interest in full.

According to the schedules, Mr. Heir has only been employed for 1 ½ years at his present job and Mrs. Heir has only been employed for 4 months at her current job. Their monthly income is also dependent upon a part-time second job.

The household is made up of 2 adults and 4 children. The expense structure provides only \$540.00 for food, only \$100 for clothing, only \$25 for home maintenance, no money for homeowner's insurance, no money for school expenses, no money for allowances and only \$320 month for daycare. There are no escalations for any expenses over the 5 years of the plan.

The Plan will take at least 60 months to complete – after increasing the secured claim of Wells Fargo Financial Acceptance. No payments are provided during the first 3 months of the Plan – even though the Vehicle continues to depreciate. Using a depreciation rate of 20% per year, the monthly payments do not cover the depreciation and interest during the term of the plan until month 51. The risk factor should be at least 6% plus prime of 4.25% in this case based upon the facts stated above and the relatively new contract.

DISCUSSION

Pursuant to 11 U.S.C. §1325(a)(5), a plan must distribute deferred cash payments equal to the present value of the secured claim. *Rake v. Wade*, 113 S.Ct. 2187, 124 L.Ed.2d 424 (1993). In this case, the Debtor has proposed payments that do not satisfy Wells Fargo Financial Acceptance's secured claim plus interest at the contract rate.

The Supreme Court was less than clear on what specifically should be used to determine an appropriate risk factor to be added to the prime rate. The plurality discussed the following three issues: (i) the circumstances of the bankruptcy estate; (ii) the nature of the security; and (iii) the duration and feasibility of the Chapter 13 Plan. In this case, all of these factors support a high risk factor.

First, the circumstances of this bankruptcy estate demonstrate a high risk factor. Debtor(s) filed this case less than 8 months after purchasing the Vehicle. They are proposing a Plan that makes Movant wait for 3 months prior to receiving a payment and the payments are not enough to cover the interest and depreciation on the Vehicle.

Second, the Vehicle is depreciable collateral with a relatively high value. The Movant is undersecured. While there is a market for disposition, obtaining relief from stay and attendant costs of repossession and sale provide little prospect for recovery of the value of the Vehicle on the date the case was filed.

Third, this Plan doesn't work. The Vehicle is undervalued and when revalued with an appropriate interest rate, there is not enough money to pay the secured claim with interest in 60 months. The Plan simply is not feasible. Moreover, both the income and expense figures demonstrate the high risks of plan completion. Both incomes are derived from jobs with tenure of less than 2 years. The expense structures are incredibly tight without any real cushion for unforeseen circumstances. The household is made up of 2 adults and 4 children. The expense structure provides only \$540.00 for food, only \$100 for clothing, only \$25 for home maintenance, no money for homeowner's insurance, no money for school expenses, no money for allowances and only \$320 month for daycare. There are no escalations for any expenses over the 5 years of the plan. In short, the maximum Plan length of 60 months and the lack of feasibility support a high risk factor.

CONCLUSION

This case may be one of those cases that the Supreme Court suggested should not be confirmed. For all of the reasons set forth herein, Wells Fargo Financial Acceptance respectfully requests that the

Court deny confirmation of Debtor's Chapter 13 Plan.

Dated: August 10, 2004

STEWART, ZLIMEN & JUNGERS

By /e/ Bradley J. Halberstadt
Bradley J. Halberstadt (#215296)
Attorneys for Movant
430 Oak Grove Street, Ste. 200
Minneapolis, Minnesota 55403
(612) 870-4100

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Jason Lee Heir and Carrie Ann Heir

Debtor(s).

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 04-41713-NCD

Bradley J. Halberstadt, agent of Stewart, Zlimen & Jungers, attorney(s) licensed to practice law in this court, with office address of with office address of 430 Oak Grove Street, Ste. 200, Minneapolis, Minnesota 55403, declares that on the date set forth below, I served the annexed **Objection to Confirmation** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Roseville, Minnesota addressed to each of them as follows:

United States Trustee
Suite 1015
300 South 4th Street
Minneapolis, MN 55415

(Attorney for Debtor(s))
Curtis K. Walker
4356 Nicollet Ave. S.
Minneapolis, MN 55409

(Trustee)
Jasmine Keller
12 S 6th Street Suite 310
Minneapolis, MN 55402

(Debtor(s))
Jason Lee Heir
1500 Sunny Way Court
Anoka, MN 55303

Carrie Ann Heir
1500 Sunny Way Court
Anoka, MN 55303

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: August 10, 2004

Signed: /e/ Bradley J. Halberstadt

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-41713-NCD
Chapter 13

Jason Lee Heir and Carrie Ann Heir,

Debtor(s).

ORDER

This matter came before this Court for confirmation of the Chapter 13 plan of reorganization of Debtor(s). Appearances were noted in the record. Based upon all the files and records, the Court makes this Order pursuant to the Federal Rules of Bankruptcy Procedure.

IT IS HEREBY ORDERED, That confirmation of the Chapter 13 plan of Debtor(s) is denied.

Dated: _____

Nancy C. Dreher
United States Bankruptcy Judge